2024 IL App (1st) 221568-U

No. 1-22-1568

Filed September 18, 2024

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JASON HILL, Plaintiff-Appellant, v. DEPAUL UNIVERISTY, SALMA GHANEM, and SCOTT PAETH, Defendants-Appellees.	)))))))))))	Appeal from the Circuit Court of Cook County. No. 20 L 4358 Honorable James E. Snyder, Judge, presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: University professor's third amended complaint failed to allege sufficient facts to state a cognizable cause of action where: (1) faculty handbook did not create obligations breached by Faculty Council's approval of a resolution critical of the professor or by the Provost's failure to repudiate the resolution, nor did professor allege cognizable damages; (2) statements in the resolution were not actionable as defamation *per se*; (3) professor failed to allege facts sufficient to state a claim for intentional interference with prospective economic advantage, and (4) professor failed to allege that he suffered an adverse employment action.

¶ 2 Jason Hill brought an action against his employer, DePaul University, DePaul's Provost, Salma Ghanem[1], and the President of DePaul's Faculty Council, Scott Paeth. Professor Hill's claims were based primarily on a Faculty Council approved resolution, which was critical of an article Professor Hill authored. The circuit court dismissed four counts of Professor Hill's third amended complaint with prejudice. Professor Hill voluntarily dismissed the surviving count and appeals the circuit court's order dismissing the other four counts.

¶ 3 I. BACKGROUND

¶ 4 Jason Hill is a tenured professor of philosophy at DePaul University in Chicago. Professor Hill authored an article, which he describes as an "op-ed," that appeared in the online publication *The Federalist* in April 2019 titled "The Moral Case for Israel Annexing the West Bank – and Beyond." The article noted that Benjamin Netanyahu had been recently elected to a fifth term as Israeli prime minister, having campaigned on a promise to "annex Jewish settlements in occupied Palestinian territories." Professor Hill wrote that the election victory "will, hopefully, see the enactment of Netanyahu's promise." He went on to argue that "Israel has the moral right to annex all of the West Bank *** for a plethora of reasons." The article contains the following subheadings: (1) "Israel's Mistake Was Allowing the Palestinian Pretense," (2) "The Palestinian Authority is a Terrible Government," (3) "Israel Has Every Right to Defeat Terrorists," and (4) "Why Palestinians Have No Moral Authority." Among Professor Hill's opinions, he wrote:

> "Not all cultures are indeed equal. Some are abysmally inferior and regressive *** a strong argument can and ought to be made to strip Palestinians of their right to vote—period *** They constitute a national security threat to Israel because a core feature of their identify

[1]Dr. Ghanem was the Acting Provost at time of the events at issue. The record indicates she was subsequently named Provost, and we will refer to her as such.

> is a commitment to destroying Israel as a Jewish state *** only a policy of radical containment or expulsion remains a viable option."[2]

A note printed below the article stated, "Jason D. Hill is honors distinguished professor of philosophy at DePaul University in Chicago."

¶ 5 Two weeks following the publication of Professor Hill's article, Dr. Paeth drafted a resolution titled "Faculty Council Resolution on Academic Freedom and Responsibility," which contained statements critical of Professor Hill's article while also acknowledging Professor Hill's academic freedom to publish it. A copy of the draft resolution appeared by hyperlink in conjunction with an article in DePaul's online student newspaper *The DePaulia* on April 30, 2019. The next day, Dr. Paeth presented the resolution to the Faculty Council for consideration. Following discussion, the Faculty Council voted 21 to 10 to approve the resolution with amendments that removed some language from the original draft.[3] An article regarding the approved resolution appeared in *The DePaulia* on May 6, 2019. The article provided a link to the original draft resolution that did not reflect the amendments approved by the Faculty Council.

¶ 6 The preamble of the resolution asserts that Professor Hill's article (1) "misrepresents the history of the Israeli-Palestinian conflict," (2) "distorts the facts about the current state of Israeli-Palestinian relations," (3) "promotes racisms toward Arabs generally and Palestinians in particular," and (4) "advocates for war crimes and ethnic cleansing against the Palestinian populations of the West Bank and the Gaza Strip." It goes on to state that the Faculty Council

[2]We recognize that statements of this nature are controversial and may evoke visceral reaction, especially following the October 7, 2023 events that escalated conflict in the region. The matters at issue in this case predate those events by more than four years. This order is a dispassionate analysis of the legal issues under the proper criteria, as is our duty. We express no view of the merits of either Professor Hill's article or the Faculty Council's resolution.

[3]A copy of the original, proposed resolution was attached as an exhibit to Hill's complaint. He alleges that a version of the approved, amended resolution was never created.

"affirms Professor Hill's right to publish and express his opinions consistent with the Faculty Handbook, the AAUP[4] Statement on Academic Freedom and Tenure, and the Guiding Principles on Speech and Expression" and "affirms that Professor Hill's article failed to exercise adequate concern for accuracy, restraint, or respect for the opinions of others, as per the AAUP guidelines." The resolution continues, stating that the Council:

> "condemns in the strongest possible terms both the tone and content of Professor Hill's article, and affirms the claims that it expresses positions that are factually inaccurate, advocate war crimes and ethnic cleansing, and give voice to racism with respect to the Palestinian populations of the West Bank and Gaza Strip, as well as Arabs generally."

Finally, the resolution concludes that the Faculty Council:

> "urges Professor Hill to seriously reconsider his positions on these issues, to take cognizance of the perspectives of other scholars on these issues, as well as the real harm his words have caused to students and other members of our community, and to refrain from abusing his freedom as a scholar in writing on controversial issues in the future."

¶ 7 A few weeks later, Provost Ghanem sent an email to the entire DePaul community with the subject line: "A Message from Acting Provost on Free Speech and Vincentian Values." In part, the message stated:

> "While I am deeply saddened that Professor Hill used his right to academic freedom and free speech to disparage one group over another, resulting in some members of our community feeling unwelcome and unsafe, I am extremely impressed by the way members of the DePaul community made their voices heard."

[4]American Association of University Professors

¶ 8 The following year, Professor Hill filed a complaint in the circuit court naming DePaul, Provost Ghanem, and Dr. Paeth as defendants. Professor Hill's third amended complaint,[5] which is the subject of this appeal, asserted five causes of action. Count I, asserted against DePaul only, alleged breach of contract based on the Faculty Handbook. Counts II and III, asserted against all defendants, claimed *per se* defamation and intentional interference with prospective economic advantage. Counts IV and V, asserted against DePaul, alleged discrimination and harassment under the Illinois Human Rights Act (Human Rights Act) (775 ILCS 5/1-101 *et seq*. (West 2018)).

¶ 9 DePaul[6] filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2018)), asserting that Professor Hill failed to state a cause of action. The court agreed regarding the first four counts. As to count I, the court found that Professor Hill failed to identify a breach of the Faculty Handbook: the handbook did not require DePaul to refrain from discussing Professor Hill and no sanction was imposed. In addition, the court found that Professor Hill had not pled that the resolution caused any damages. For the defamation claim, the court stated that it considered Professor Hill a public figure since he described himself as a "public intellectual" and debated controversial topics while speaking with the imprimatur of DePaul University. The court determined that the resolution's statements were nonactionable opinions, observing that the resolution was explicitly directed toward Professor Hill's article and finding that the resolution constituted "an opinion regarding his opinions." The court found count III to be "incomprehensible" and noted that the claim relied on unidentified, speculative economic opportunities. As to count IV, the court found that Professor Hill failed to state an employment discrimination claim since he did not suffer any change in the terms and conditions of employment.

[5]For simplicity, we refer to the third amended complaint as "the complaint" from here forward.

[6]The defendants have appeared and litigated jointly in this case. For simplicity, we refer to them collectively as DePaul unless otherwise indicated.

Finally, the court found that Professor Hill pled sufficient facts to state a claim of unlawful harassment under the Human Rights Act. Based on its findings, the court dismissed counts I through IV with prejudice while denying DePaul's motion as to count V.

¶ 10 Subsequently, Professor Hill voluntarily dismissed count V and this appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Professor Hill appeals the circuit court's dismissal of his complaint pursuant to section 2-615 of the Code. A motion to dismiss under that section challenges the legal sufficiency of the complaint on its face. *Lintzeris v. City of Chicago*, 2023 IL 127547, ¶ 18. "The essential question presented is whether the allegations of the complaint, taken as true and construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Id*. A complaint should not be dismissed unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Quiroz v. Chicago Transit Authority*, 2022 IL 127603, ¶ 11. We review the circuit court's dismissal of a complaint pursuant to section 2-615 *de novo*. *Glover v. City of Chicago*, 2023 IL App (1st) 211353, ¶ 38.

¶ 13 A. Breach of Contract

¶ 14 Professor Hill first asserted breach of contract. To state a cause of action for breach of contract, a plaintiff must allege " '(1) the existence of a valid and enforceable contract, (2) substantial performance by the plaintiff, (3) breach by the defendant, and (4) damages caused by that breach.' " *Village of Kirkland v. Kirkland Properties Holdings Co., LLC I*, 2023 IL 128612, ¶ 46 (quoting *Ivey v. Transunion Rental Screening Solutions, Inc.*, 2022 IL 127903, ¶ 28).

¶ 15 Professor Hill alleged that the provisions of the DePaul Faculty Handbook constitute enforceable terms of his employment. DePaul does not dispute this. However, DePaul argues that

Professor Hill mischaracterizes the Faculty Handbook and his allegations fail to establish a breach of its provisions.

¶ 16 In his complaint, Professor Hill relies on three specific provisions of the Faculty Handbook and an incorporated AAUP guideline. First, Hill cited and attached the AAUP's "1940 Statement on Academic Freedom and Tenure," which states that university teachers "should be free from institutional censorship or discipline." Next, he cited section 6.1 of the Faculty Handbook, which states that academic freedom is accorded a prominent position at DePaul, and such academic freedom extends to public statements made in a faculty member's own name. Citing section 4.4.4.1, Hill alleged:

> "No tenured faculty member can suffer institutional condemnation or discipline or be threatened with loss of tenure or academic freedom rights, except via the express discipline procedures of §4.4 of the Faculty Handbook, which guarantee, *inter alia*, unbiased adjudication either by the university provost, or a faculty hearing committee chosen from a pool of faculty assembled by an unbiased Faculty Council."

Lastly, Hill cited section 1.3.6, which he described as requiring all Faculty Council resolutions to be reviewed by the university President or Provost, and also that the President or Provost must disapprove any improper resolution.

¶ 17 DePaul breached these provisions, Professor Hill claimed, by (1) censuring him through the Faculty Council's resolution without utilizing the disciplinary procedures called for in the Faculty Handbook, (2) failing to preemptively disapprove the resolution before its adoption, (3) failing to disapprove of the resolution after its adoption, and (4) endorsing the resolution through Provost Ghanem's university wide email message.

¶ 18 When exhibits are attached to a complaint, as the Faculty Handbook was here, the exhibit becomes part of the complaint. *R & B Kapital Development, LLC v. North Shore Community Bank & Trust Co.*, 358 Ill. App. 3d 912, 922 (2005). But "[w]here an exhibit contradicts the allegations in a complaint, the exhibit controls." *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18. Here, we find that the attached Faculty Handbook contradicts Professor Hill's allegations that DePaul breached its provisions. To be sure, Professor Hill's complaint contains his interpretation of the Faculty Handbook's provisions, along with selective quotations of its text. His interpretations, however, are not well-pled facts which we must take as true, but conclusions we may disregard. See *BMO Harris Bank, N.A. v. Porter*, 2018 IL App (1st) 171308, ¶ 58 (observing that a party's interpretation of a contract term as alleged in a pleading is a conclusion). Instead, we interpret the terms of a contract as a matter of law *de novo*. *Wiczer v. Wojciak*, 2015 IL App (1st) 123753, ¶ 33. Our primary objective when interpreting a contract is to give effect to the intent of the parties. *Owen v. Village of Maywood*, 2023 IL App (1st) 220350, ¶ 21. When the words of a contract are clear and unambiguous, they must be given their plain, ordinary, and popular meaning. *Id*.

¶ 19 The thrust of Professor Hill's claim is procedural—that he was disciplined without being afforded a formal hearing as called for in the Faculty Handbook. But the sections of Chapter 4 Professor Hill cited do not provide for such a hearing under the circumstances alleged in Professor Hill's complaint. Rather, the formal disciplinary hearing procedure provided in Chapter 4 is only implicated when the Provost refers a dean's written statement of charges against a tenured faculty member for a formal faculty hearing with a recommendation of a "major sanction," which the handbook defines solely as either suspension or dismissal. Since DePaul did not suspend or dismiss Professor Hill, nor even seek to, the hearing procedure of Chapter 4 that his claim relies on was not implicated.

¶ 20 Ultimately, the attached Faculty Handbook contradicts Professor Hill's claim. Since the Faculty Council's adoption of the resolution did not implicate the right to a hearing, the action did not amount to a breach of a contractual obligation.

¶ 21 Similarly, the Faculty Handbook contradicts Professor Hill's allegations that the university President or Provost was required to disapprove the Faculty Council's resolution, either preemptively or after its adoption. Section 1.3.6, which Professor Hill cited, states: "All decisions and recommendations of the Faculty Council shall be forwarded to the president of the university (or the provost as designee) for approval. In the event the president of the university (or the provost as designee) shall communicate the reasons to the Faculty Council." It is unclear whether the Faculty Council's resolution here constitutes a decision or recommendation, as these do not appear to be defined terms in the Faculty Handbook. Nonetheless, the provision cannot be read to impose an affirmative duty to disapprove any decision or recommendation. Contrary to Professor Hill's allegations, this section suggests the President and Provost have discretion to approve or disapprove any Faculty Council decision or recommendation. In addition, the only obligation under this term is that the President or Provost must communicate their reasons to the Faculty Council if they disapprove. It creates no duty to any individual faculty member. For these reasons, Professor Hill has failed to sufficiently allege that the failure to disapprove the resolution amounted to a breach of the Faculty Handbook.

¶ 22 Professor Hill's invocations of section 6.1 and the AAUP's "1940 Statement on Academic Freedom and Tenure" fail to allege an enforceable obligation. Section 6.1 states:

> "DePaul accords academic freedom a prominent position as an integral part of the university's scholarly and religious heritage. The university attempts to create an environment in which persons engaged in learning and research exercise this freedom and

> respect it in others as contributing to the God-given dignity of individual persons and enhancing the academic process. University precept and tradition protect this freedom from infringement. Not only the faculty but also students and other members of the university community enjoy this freedom as they participate in the various forms of open inquiry and debate, as for example, classroom presentation and discussion, research and publication, public statements made as a citizen in one's own name, and other forms of creative expression."

The provision then states that DePaul is guided by the AAUP 1940 Statement, subject to amendment by the Faculty Council. Professor Hill cites that document's declaration that university professors "should be free from institutional censorship or discipline." Those words appear within a statement that reads in full:

> "College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special positions in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution."

¶ 23 Neither section 6.1 nor the AAUP 1940 Statement, however, set forth contractual obligations. Both provide aspirational guidance, not clear, enforceable terms of employment for university faculty. As such, the statements fail to provide an enforceable duty that DePaul could have breached. See *Babbitt Municipalities, Inc. v. Health Care Service Corp.*, 2016 IL App (1st)

152662, ¶ 32 (noting that vague, aspirational language does not define a specifically enforceable contractual duty).

¶ 24 As for the Provost's university-wide email message, Professor Hill has failed to identify a provision of the Faculty Handbook that was breached by such action. He alleges that the message revealed the Provost could not be unbiased in any disciplinary proceedings. As we noted, however, no right to a disciplinary hearing was implicated here as DePaul did not seek to suspend or dismiss Professor Hill.

¶ 25 Separately, Professor Hill has not pled facts to demonstrate that he suffered damages resulting from the breach he alleges. Count I contains no specific allegation as to how he was damaged. Instead, the count asserts the conclusory allegation that "[a]s alleged more fully above, Dr. Hill has been damaged as a proximate result of DePaul's breaches." Illinois is a fact-pleading jurisdiction. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). A "plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action [citation], not simply conclusions. [Citation]." *Id*. at 429-30. Thus, on its face, count I fails to state a claim for breach of contract.

¶ 26 Nonetheless, pleadings are to be construed liberally "with a view to doing substantial justice between the parties." 735 ILCS 5/2-603(c) (West 2020)). A breach of contract claim seeks to recover the plaintiff's expectation interest, or benefit of the bargain, had the breach not occurred, or reimbursement for losses incurred by reliance of the contract. *MC Baldwin Financial Co. v. DiMaggio, Rosario & Veraja, LLC*, 364 Ill. App. 3d 6, 14 (2006). Thus, in a properly pled claim, the claimed damages and relief sought would be mirror images. It follows that if a claim omitted claimed damages, we could discern them from the relief requested. But here, count I contains no specific request for relief, as required by the Civil Practice Code (see 735 ILCS 5/2-604.2(a) (West

2020)), which prevents us from finding that Professor Hill has pled damages resulting from the claimed breach.

¶ 27 In his brief, Professor Hill directs us to other paragraphs of the complaint outside of count I to argue that he pled resulting damages. These include: (1) "severe mental stress and ill health," (2) "diminished [prospects] for future earnings outside of DePaul," (3) "stunted opportunity for professional advancement both within and outside of DePaul," (4) lost speaking engagements and extracurricular pay, (5) lost opportunities for promotion, wage increases, and earnings outside of DePaul, and (6) diminished class sizes. The Civil Practice Code requires that all pleadings "contain a plain and concise statement of the pleader's cause of action" (735 ILCS 5/2-603(a) (West 2020)) and state each cause of action in a separate count (*id*. § 2-603(b)). Thus, for the claimed damages Professor Hill cites on appeal to be part of his breach of contract claim, they needed to be stated in that count. Count I's incorporation of the preceding 104 paragraphs and unspecific reference to "[a]s alleged more fully above" does not suffice. It is not apparent from count I, or the complaint read in whole, that these allegations pertain to the breach of contract claim.

¶ 28 Nevertheless, even liberally construing these claimed damages as part of count I, they fail to cure the count's deficiency. In addition to being stated in conclusory terms, the claimed damages are either speculative, immeasurable, or, as expressed, not proximately caused by DePaul's alleged breach. For breach of contract, "the plaintiff must prove damages with reasonable certainty without resort to conjecture or speculation." *Ivey v. Transunion Rental Screening Solutions, Inc.*, 2021 IL App (1st) 200894, ¶ 39. A plaintiff must be able to " 'establish an actual loss or measurable damages resulting from the breach in order to recover.' " *In re Illinois Bell Telephone Link-Up II & Late Charge Litigation*, 2013 IL App (1st) 113349, ¶ 19 (quoting *Avery v. State Farm Mutual*

Automobile Insurance Co., 216 Ill. 2d 100, 149 (2005)). And "[d]amages which are not the proximate cause of the breach are not allowed." *In re Illinois Bell*, 2013 IL App (1st) 113349, ¶ 19.

¶ 29 Professor Hill's alleged damages are not supported by specific facts to show that he has suffered any actual, measurable loss. His amorphous references to diminished prospects and stunted or lost opportunities are speculative as to what might occur in the future, and do not qualify as an actual loss. Moreover, Professor Hill fails to allege facts showing that any of these purported damages were caused by the claimed breach of contract. The allegations appear under the heading "Additional Facts Regarding the Aftermath of the Publications and Damages." Professor Hill not only fails to connect his claimed damages to the alleged breach, but his complaint also attributes his damages to other causes. Under the same heading in which he asserts his damages, Professor Hill alleges that he began receiving death threats shortly after his article was published. He wrote a message to Provost Ghanem on April 26, 2019—five days before the Faculty Council considered the resolution—telling her about student protests and his safety concerns. Professor Hill further alleged that some faculty members petitioned that he be barred from teaching upper level courses, students distributed leaflets condemning him, and students were encouraged to boycott his classes. He became a pariah on campus. At no point does Professor Hill's complaint attribute any of his claimed damages to the resolution. Thus, even construing the complaint liberally, it fails to allege that the claimed breach of contract proximately caused him damages.

¶ 30 For these reasons, we find that Professor Hill failed to plead sufficient facts to state a claim for breach of contract. Accordingly, count I was properly dismissed.

¶ 31 B. Defamation

¶ 32 Count II asserted a claim of defamation against all three defendants. To state a claim for defamation, a plaintiff must allege facts showing (1) the defendant made a false statement about

the plaintiff, (2) the defendant made an unprivileged publication of that statement to a third party, and (3) the publication caused damages. *Dent v. Constellation NewEnergy, Inc.*, 2022 IL 126795, ¶ 26. A statement is defamatory when it "harms a person's reputation to the extent that it lowers the person in the eyes of the community or deters the community from associating with her or him." *Dobias v. Oak Park & River Forest High School District 200*, 2016 IL App (1st) 152205, ¶ 53. Defamation may be either *per se* or *per quod*. *Id*. Since Hill only alleges defamation *per se*, we confine our analysis to that issue. See *id*.

¶ 33 A statement is *per se* defamatory if its harm is obvious and apparent on its face. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). Our supreme court has recognized five categories of statements as defamatory *per se*: (1) words that impute the commission of a criminal offense, (2) words that impute infection with a loathsome communicable disease, (3) words that impute an inability to perform or want of integrity in the discharge of duties of office or employment, (4) words that prejudice a party, or impute lack of ability, in his or her trade, profession or business, or (5) false accusations of fornication and adultery. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 88-89 (1996). Statements that fall within these categories are considered so obviously and materially harmful to the plaintiff that injury is presumed. *Id*. at 87. Thus, a defamation *per se* claim relieves the plaintiff of having to prove actual damages. *Green v. Rogers*, 234 Ill. 2d 478, 495 (2009). However, a plaintiff must plead a defamation *per se* claim "with a heightened level of precision and particularity." *Id*.

¶ 34 In his brief before this court, Professor Hill identifies three "categories" of defamatory statements: (1) statements made in the Faculty Council's resolution, (2) statements made during the Faculty Council's May 1 meeting, and (3) statements made in Provost Ghanem's email. Professor Hill's complaint, by contrast, did not set forth these three categories of statements in his

defamation count. In fact, the defamation count fails to identify *any* specific statement. Instead, count II merely alleges that "statements about Dr. Hill in [the Faculty Council's] Resolution were false" and *per se* defamatory. The remainder of the allegations in the defamation count assert that Dr. Paeth and Provost Ghanem both violated Faculty Handbook rules by introducing the resolution for the Faculty Council's approval and that Provost Ghanem failed to repudiate it after its approval. Thus, as expressed, Professor Hill's defamation count mostly repeats allegations from his breach of contract count. With irrelevant allegations and no specific statement identified, Professor Hill's defamation count fails to plead defamation *per se* with the heightened level of precision and particularity required.

¶ 35 Nevertheless, the defamation count refers to statements in the Faculty Council's resolution and another portion of Professor Hill's complaint identified five specific statements in the resolution that he claimed were false and defamatory. The five statements were that Professor Hill's article: (1) "failed to exercise adequate concern for accuracy, restraint, or respect for the opinions of others, as per AAUP guidelines," (2) "represents an abuse of [Professor Hill's] academic freedom," and expresses positions that (3) "are factually inaccurate," (4) "advocate war crimes and ethnic cleansing," and (5) "give voice to racism."[7] We limit our inquiry to these five statements. We will not consider statements made in the Faculty Council meeting and Provost Ghanem's email since Professor Hill raised them for the first time on appeal. Although Professor Hill attached both the meeting minutes and the email as exhibits, his complaint failed to allege that either item contained defamatory statements. "A plaintiff fixes the issues in controversy and the theories upon which recovery is sought by the allegations in his complaint." *Pagano v. Occidental Chemical Corp.*, 257 Ill. App. 3d 905, 911 (1994). New factual allegations, raised on appeal from

[7]Professor Hill's response to DePaul's motion to dismiss in the trial court also cited these five statements as the basis for his defamation claim.

dismissal of the complaint, will not be considered. *Osten v. Northwestern Memorial Hospital*, 2018 IL App (1st) 172072, ¶ 22.

¶ 36 Professor Hill invokes the fourth category of *per se* defamatory statements, arguing that the resolution's statements imputed a lack of ability in his profession. He claims the statements accuse him of "publishing factually incorrect facts based upon *** racist attitudes" and question his fitness as a college professor. The complaint notes that the phrases "abuse of academic freedom" and "failure to exercise adequate concern for accuracy, restraint, or respect for the opinions of others" parrot admonitions in AAUP guidelines. Further, those guidelines contemplate that a professor's failure to observe such admonitions when making "extramural utterances" may raise "grave doubts" of the professor's fitness for their position and may provide a basis for a university to initiate disciplinary proceedings. Thus, Professor Hill argues that the resolution essentially imputed that he is unfit to be a professor and that cause for his termination existed.

¶ 37 To be sure, stating that a professor's written work was inaccurate, violated applicable guidelines, was an abuse of academic freedom, advocated war crimes and ethnic cleansing, and gave voice to racism, could impute that the professor lacks integrity and fitness to be a university professor. But the fact that a statement might reasonably be interpreted as defamatory does not entirely resolve whether the statement is actionable. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 367 Ill. App. 3d 48, 52 (2006), *rev'd on other grounds*, 227 Ill. 2d 381 (2008). A *per se* defamatory statement, not subject to an innocent construction, "still may enjoy constitutional protection as an expression of opinion." *Solaia Technology*, 221 Ill. 2d at 581. " 'Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.' " *Id.* (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974)). Thus, the first

amendment affords "breathing space" to "freely express [oneself] on a controversial subject." *Colson v. Stieg*, 89 Ill. 2d 205, 211 (1982) (discussing *Gertz*). "The test is restrictive: a defamatory statement is constitutionally protected only if it cannot be reasonably interpreted as stating actual fact." *Solaia Technology*, 221 Ill. 2d at 581. A statement is actionable only if it is factual and false. *Id*. at 582.

¶ 38 Professor Hill contends that the statements are factual, as they accuse him of verifiable "concrete, wrongful conduct." However, we do not accept a party's asserted interpretation of a statement. *Dobias*, 2016 IL App (1st) 152205, ¶ 57. Rather, the preliminary construction of an allegedly defamatory statement is a question of law, which we review *de novo*. *Green*, 234 Ill. 2d 492. Likewise, whether a statement is one of opinion or fact is a question of law. *Jacobson v. Gimel*, 2013 IL App (2d) 120478, ¶ 35.

¶ 39 "[T]here is no artificial distinction between opinion and fact: a false assertion of fact can be defamatory even when couched within apparent opinion or rhetorical hyperbole." *Solaia Technology*, 221 Ill. 2d at 581. To determine if a statement can reasonably be interpreted as stating a fact, we consider several factors: (1) whether the statement has a precise and readily understood meaning, (2) whether the statement is verifiable, and (3) whether the statement's literary or social context signals that it has factual content. *Imperial Apparel*, 227 Ill. 2d at 398. But, ultimately, a statement in the form of an opinion is actionable "only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion." Restatement (Second) of Torts § 566 (originally published 1977, updated June 2024). In other words, an opinion may be actionable if it implies that the speaker knows certain facts, unknown to the audience, which support the speaker's opinion and are detrimental to the plaintiff. 112 Causes of Action 2d 443 § 16 (originally published in 2024, updated June 2024).

¶ 40 Comment *b* of section 566 of the Restatement (Second) of Torts elaborates on this point. See *Tilschner v. Spangler*, 409 Ill. App. 3d 988, 994 (2011) (observing that Illinois courts often deem the Restatements to be persuasive authority). Comment *b* distinguishes between two types of opinion—the pure type and the mixed type. Restatement (Second) of Torts § 566, cmt. b. A mixed type of opinion:

> "is apparently based on facts regarding the plaintiff or his conduct that have not been stated by the defendant or assumed to exist by the parties to the communication. Here the expression of the opinion gives rise to the inference that there are undisclosed facts that justify the forming of the opinion expressed by the defendant." *Id*.

Pure expressions of opinion, on the other hand, occur "when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character." *Id*. Comment *b* further explains:

> "The pure type of expression of opinion may also occur when the maker of the comment does not himself express the alleged facts on which he bases the expression of opinion. This happens when both parties to the communication know the facts or assume their existence and the comment is clearly based on those assumed facts and does not imply the existence of other facts in order to justify the comment. The assumption of the facts may come about because someone else has stated them or because they were assumed by both parties as a result of their notoriety or otherwise." *Id*.

In accordance with section 566, only the mixed type of opinions are actionable, pure opinions are not. Restatement (Second) of Torts § 566.

¶ 41 Applying section 566, with guidance from comment *b*, we find that the resolution's alleged defamatory statements are nonactionable, pure expressions of opinion. Insofar as the statements

bore on Professor Hill's conduct, qualifications, or character, the resolution stated the factual basis for the opinions it expressed—the existence and content of Professor Hill's article. The resolution explicitly indicated that it pertained to Professor Hill's article and cited its title. Each alleged defamatory statement was directed toward the article: "*Professor Hill's article* failed to exercise adequate concern for accuracy, restraint, or respect for the opinions of others, as per the AAUP guidelines. As such, *this article* represents an abuse of academic freedom *** *it* expresses positions that are factually inaccurate, advocate war crimes and ethnic cleansing and give voice to racism ***." (Emphasis added). These comments indicate that the content of the article alone justifies the opinions expressed. In addition to the article's content, the resolution assumes unstated facts about the Israeli-Palestinian conflict to opine that the article was inaccurate, advocated war crimes, gave voice to racism, and so on, but those facts are not about Professor Hill or his conduct. Likewise, whether Professor Hill abused his academic freedom implies facts about the boundaries of academic freedom, which are also not facts about Professor Hill. Nevertheless, the resolution states what those boundaries are by citing the AAUP guidelines and explaining how the resolution believed that the article abused academic freedom—by "fail[ing] to exercise adequate concern for accuracy, restraint, or respect for the opinions of others." In sum, none of the alleged defamatory statements imply the existence of facts about Professor Hill apart from the content of his article to justify the opinions expressed. Contrary to his argument, the resolution cannot be reasonably interpreted as asserting some "concrete, wrongful" conduct by Professor Hill. Rather, the alleged defamatory statements meet the Restatement's description of nonactionable, pure expressions of opinion.

¶ 42 We also observe that the resolution's opinions about the article are evaluative. That is, they express a value judgment of Professor Hill's article. See 1 Law of Defamation § 6:34 (2d ed.)

(Updated May 2024). An "evaluative opinion conveys the publisher's judgment as to the value of another's behavior or work product, rather than the publisher's judgment as to the existence of facts." *Id*. Evaluative opinions are not actionable since, by definition, such statements are based on disclosed facts, *i.e.*, the work product evaluated. *Id*. Like a movie or book review, one can judge the merit of the evaluation or form their own opinion of the work product simply by viewing it independently. Such is the natural consequence of publishing a work for public consumption. Evaluation, positive or negative, is to be expected. Just as the first amendment protected Professor Hill's freedom to publish his "op-ed," it also protects responsive criticism like the statements in the resolution. A false allegation of fact about the author, on the other hand, may be actionable. 1 Robert D. Sack, *Sack on Defamation*, § 4.3.1.3 (3d ed. 2004). "But so long as the statement is directed to the work-product *** it is not actionable." *Id*. Here, the resolution's statements were solely directed toward Professor Hill's article.

¶ 43 Further, the context weighs toward finding that the resolution's statements are not actionable. The resolution is fundamentally an academic's or group of academics' criticism of the views expressed in another academic's work on a controversial subject. "[I]t is well established in Illinois that academic evaluations and decisions are not subject to judicial review." *Seitz-Partridge v. Loyola University of Chicago*, 2013 IL App (1st) 113409, ¶ 30 (finding that a negative written critique of a doctoral candidate's preliminary examination was nonactionable opinion). Some courts and commentators have suggested that courts should not be the arbiters of academic debate. Sack, *supra*, § 4.3.1.4 ("in some cases it might be more accurate to say that courts *ought not* to determine truth or falsity rather than that they *cannot*") (Emphasis in original). Rather, "[m]ore papers, more discussion, better data, and more satisfactory models—not larger awards of

damages—mark the path toward superior understanding of the world around us." *Underwager v. Salter*, 22 F. 3d 730, 736 (7th Cir. 1994).

¶ 44 For these reasons, we find that the resolution expressed nonactionable opinions. As such, Professor Hill cannot prove defamation *per se* and the claim was properly dismissed.

¶ 45 C. Intentional Interference with Prospective Economic Advantage

¶ 46 We next consider count III, Professor Hill's claim of intentional interference with a prospective economic advantage (intentional interference). To state such a claim, a plaintiff must allege facts demonstrating (1) a reasonable expectation of entering a valid business relationship, (2) the defendant's knowledge of the expectation, (3) the defendant's purposeful interference that prevents the expectancy from ripening, and (4) damage to the plaintiff resulting from the interference. *Atanus v. American Airlines, Inc.*, 403 Ill. App. 3d 549, 554 (2010).

¶ 47 In his complaint, Professor Hill asserted that in the decade preceding 2019, five different institutions, which he identified by name, had paid him for speaking and teaching engagements. Four are universities in the United States and one is an institution in the Czech Republic. None of the institutions have invited Professor Hill to return since the Faculty Council approved the resolution. As a result, Professor Hill has not earned any additional income from engagements with other institutions. Professor Hill alleged that DePaul was aware of his relationships with other institutions and "set out to ruin [his] reputation, and in so doing abort his relationships with institutions and publications outside of DePaul."

¶ 48 We find his allegations insufficient. While Professor Hill identified specific institutions, he alleged no additional facts about any engagements with those institutions and failed to establish a reasonable expectancy of future engagements with them. *Kapatos v. Better Government Ass'n*, 2015 IL App (1st) 140534, ¶ 80 ("The plaintiff must specifically identify the person with whom

the plaintiff expected to contract."). Although his appellate brief states, "[t]hese engagements were intended to be renewed periodically," no such factual allegations appear in the complaint to support this assertion. Even so, a subjective hope that a contract will be renewed is insufficient to establish a reasonable expectancy. *Anderson v. Vanden Dorpal*, 172 Ill. 2d 399, 408-09 (1996).

¶ 49 In addition, Professor Hill failed to allege that DePaul committed some impropriety to interfere with an expectancy. A plaintiff must show that the defendant committed some impropriety to purposely cause the interference. *Grako v. Bill Walsh Chevrolet-Cadillac, Inc.*, 2023 IL App (3d) 220324, ¶ 36. As to how DePaul interfered, Professor Hill essentially repeats his breach of contract claim. He alleges that Dr. Paeth and Provost Ghanem failed to abide by the Faculty Handbook in drafting and obtaining the Faculty Council's approval of the resolution and failing to disapprove it. We have already determined that DePaul did not breach the Faculty Handbook. Thus, these allegations do not amount to an impropriety.

¶ 50 Further, no allegations in the complaint demonstrate or support an inference that DePaul took any action directed toward the five institutions Professor Hill identified. A plaintiff must "allege action by the interfering party directed towards the party with whom the plaintiff expects to do business." *Schuler v. Abbott Laboratories*, 265 Ill. App. 3d 991, 994-95 (1993). Thus, Professor Hill is unable to prove an intentional interference with an expectancy with the other institutions.

¶ 51 Moreover, the complaint fails to allege facts indicating that DePaul was the cause of the other institutions' lack of engagement with Professor Hill. See *Grako*, 2023 IL App (3d) 220324, ¶ 53 (stating that the third element of intentional interference requires that the interference caused a termination of the expectancy). The mere fact that the other institutions did not engage Professor Hill following the resolution's approval does not mean that the resolution caused this result. "After

this, therefore, because of it"[8] is a well-known logical fallacy and will not act as a substitute for allegations of fact establishing a causal connection. *Hussung v. Patel*, 369 Ill. App. 3d 924, 933 (2007).

¶ 52 We also note that count III is inconsistent. Apart from the claim related to other institutions, Professor Hill alleged that the defendants' actions "impaired his contractual rights with DePaul" and "impair[ed] his prospects for advancement within the DePaul faculty." Since intentional interference requires that a defendant took actions directed toward a third party, an employer cannot interfere with its own business relationship with its employees. *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 411 (1999). Thus, Professor Hill cannot state an intentional interference claim against DePaul related to his relationship with DePaul. Likewise, "employees acting on behalf of an employer cannot interfere with a plaintiff's business relationship [with the employer]." *Id*. The complaint cannot be read to allege that Provost Ghanem or Dr. Paeth were acting other than on behalf of DePaul. So, no interference can be asserted against them either.

¶ 53 For these reasons, we find that Professor Hill cannot prove intentional interference and count III was properly dismissed.

¶ 54 D. Employment Discrimination

¶ 55 Lastly, Professor Hill's complaint alleged unlawful discrimination under the Human Rights Act. Professor Hill describes himself as "a dark-complected man of Afro-Caribe descent," of Jamaican origin, and homosexual. Professor Hill alleged that other DePaul faculty members—none of whom shared Professor Hill's race, national origin, or sexual orientation—have made "controversy-generating" statements concerning the Israeli-Palestinian conflict but were not subject to a Faculty Council resolution, as he was. In addition, he claimed that DePaul faculty

[8]Often expressed by the Latin maxim *post hoc ergo propter hoc*, the fallacy confuses sequence with consequence. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 175 (2008).

orchestrated a student protest against him, and DePaul allowed a digital bulletin board to be created in which pejorative postings accumulated that discouraged students from enrolling in his courses. Thus, Professor Hill alleged that DePaul discriminated against him on the basis of race, color, ethnicity, and sexual orientation.

¶ 56 Employment discrimination claims brought under the Human Rights Act are analyzed using the framework established by the United States Supreme Court for claims brought under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq*. (2018)). *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178 (1989). To establish a *prima facie* claim of employment discrimination, a plaintiff must demonstrate that they (1) are a member of a protected class, (2) were meeting the employer's legitimate business expectations, (3) suffered an adverse employment action, and (4) the employer treated similarly situated employees outside of the class more favorably. *Spencer v. Illinois Human Rights Comm'n*, 2021 IL App (1st) 170026, ¶ 34.

¶ 57 To qualify as an adverse employment action, the action must be "tangible" or "material." *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). A "tangible employment action" connotes a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Id*. "Materially adverse" employment actions can also include "a demotion evidenced by a decrease in wage or salary, a less distinguished title, ... or other indices ... unique to a particular situation." (Internal quotation marks omitted). *Feingold v. N.Y.*, 366 F. 3d 138, 152 (2d Cir. 2004). " '[N]ot everything that makes an employee unhappy is an actionable adverse action.' " *Hoffelt v. Illinois Department of Human Rights*, 367 Ill. App. 3d 628, 633 (2006) (quoting *Smart v. Ball State University*, 89 F. 3d 437, 441 (7th Cir. 1996)).

¶ 58 In Professor Hill's opening brief, he asserts that he pled an adverse employment action by citing "numerous instances of loss of pay." However, he fails to cite any portion of the complaint in support. As best as we can glean, the complaint's only allegations that could be construed as claiming a loss in pay is that "[t]he opportunity for Dr. Hill to be awarded promotions, with concomitant wage increases, has been diminished." In his reply brief, Professor Hill contends that the Faculty Council's approval of the resolution was itself an adverse employment action.

¶ 59 We find that Professor Hill failed to plead that he suffered an adverse employment action. As acknowledged at oral argument, Professor Hill remains a tenured professor at DePaul. He was not fired. He was not suspended. He was not demoted or reassigned. And his pay was not reduced. Professor Hill has pled no tangible loss, only amorphous speculation that his prospects are diminished. We observe that Professor Hill characterizes the Faculty Council's resolution as a censure and DePaul disputes that characterization. We need not resolve the question but note that even if we were to regard the resolution as a censure, we would find that a censure alone is not a materially adverse employment action. "[W]here a censured employee retains his job and does not suffer any loss of pay or rank, any alleged harm to his stature or earnings prospects is purely speculative." *Powell v. Fujimoto*, 119 Fed. Appx. 803, 807 (7th Cir. 2004) (finding that a university professor's claim that his censure reduced his earning capacity failed to allege a cognizable property interest). Accordingly, Professor Hill failed to plead a *prima facie* claim of employment discrimination. Count IV was properly dismissed.

¶ 60 III. CONCLUSION

¶ 61 Based on the foregoing, we find that no set of facts can be proven that would entitle Professor Hill to recovery. Accordingly, we affirm the judgment of the circuit court.

¶ 62 Affirmed.